

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE****BARRY BUTKIEWICZ,***Plaintiff,*

v.

**THE ROMAN CATHOLIC DIOCESE OF  
BUFFALO, NEW YORK; FRANCISCAN  
FRIARS CONVENTUAL OF THE  
PROVINCE OF OUR LADY OF THE  
ANGELS; AND ST. FRANCIS HIGH  
SCHOOL,***Defendants.*

Index No.

**VERIFIED COMPLAINT****JURY TRIAL DEMANDED**

Plaintiff Barry Butkiewicz, by his attorneys Weitz & Luxenberg PC, brings this action against The Roman Catholic Diocese of Buffalo, New York, St. Francis High School, and Franciscan Friars – Our Lady of the Angels Province, Inc. on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendants reside in this County and a substantial part of the events and omissions giving rise to the claim occurred in Erie County.

### **PARTIES**

4. Plaintiff Barry Butkiewicz (“Plaintiff”) is an individual residing in Wayne County, Michigan.

5. Defendant the Roman Catholic Diocese of Buffalo, New York (“Diocese of Buffalo”) is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 795 Main Street in Buffalo, Erie County, New York.

6. At all relevant times, the Diocese of Buffalo created, oversaw, managed, controlled, directed and operated parishes, churches, or catholic schools of the Diocese of Buffalo including St. Francis High School.

7. At all relevant times, the Diocese of Buffalo managed, supervised, employed, directed and/or controlled all clerics assigned to work in parishes, churches, or catholic schools of the Diocese of Buffalo including Father Marion Tolczyk.

8. At all relevant times, clerics assigned to the Diocese of Buffalo were agents, managers, directors, or employees of the Diocese of Buffalo.

9. Defendant the Franciscan Friars –Our Lady of the Angels Province, Inc. (“OFM Conv.-OLA”) is a religious corporation incorporated in the State of Maryland with its principal office at 12300 Folly Quarter Road, Ellicott City, Maryland.

10. At all relevant times, OFM Conv. – OLA was and has been a religious community of men within and under the authority of the Diocese of Buffalo.

11. St. Francis High School is a religious school organized pursuant to state law with its principal office at 4129 Lake Shore Road, Hamburg, New York.

12. At all relevant times, St. Francis High School was and has been a Roman Catholic parochial school within and under the authority and control of the Diocese of Brooklyn and founded, administered, and operated by OFM Conv. – OLA.

13. At all relevant times, clerics assigned to St. Francis High School were agents, managers, directors, or employees of St. Francis High School, OFM Conv. –OLA, and the Diocese of Buffalo.

### **FACTS COMMON TO ALL CLAIMS**

14. Plaintiff was enrolled as a student at St. Francis High School in Hamburg, New York for Ninth Grade, Tenth Grade, Eleventh Grade, and Twelfth Grade.

15. During the times relevant to the allegations set forth herein, Defendants Diocese of Buffalo and OFM Conv. – OLA were responsible for overseeing, managing, controlling, directing and operating St. Francis High School.

16. Father Marion Tolczyk was a cleric assigned by Defendant Diocese of Buffalo and OFM Conv. – OLA to St. Francis High School as Principal.

17. Through his position at, within, or for the other Defendants, Father Marion Tolczyk was put in direct contact with Plaintiff, a minor parishioner of the Diocese of Buffalo and student at St. Francis High School.

18. In approximately 1965, Plaintiff began attending St. Francis High School as a Ninth Grade Student.

19. In approximately 1965, when Plaintiff was approximately sixteen years of age, he was repeatedly sexually abused by Father Marion Tolczyk at St. Francis High School.

20. Father Marion Tolczyk used these encounters, gained through his position at St. Francis High School which granted him access to Defendants' young parishioners and students, when Plaintiff was approximately sixteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

21. Father Marion Tolczyk continued to sexually abuse Plaintiff until Plaintiff graduated from St. Francis High School in 1969.

22. At all times material hereto, Father Marion Tolczyk was under the management, supervision, employ, direction and/or control of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School.

23. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Marion Tolczyk who sexually abused Plaintiff.

24. Defendants had the responsibility to manage, supervise, control and/or direct clerics who served at St. Francis High School, and specifically had a duty not to aid pedophiles such as Father Marion Tolczyk by allowing them and/or, assigning, maintaining, and/or appointing them to positions with, access to minors.

25. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault vulnerable children. Defendants knew and/or should have known that Father Marion Tolczyk used his position at St. Francis High School to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

26. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

27. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

**CAUSES OF ACTION****FIRST CAUSE OF ACTION****Negligent Hiring/Retention/Supervision/Direction****(As to All Defendants)**

28. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

29. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School at all relevant times represented or otherwise indicated to parents of St. Francis High School students that minor children would be physically safe while in the presence of clerics assigned to St. Francis High School. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a cleric assigned to St. Francis High School Plaintiff would be kept reasonably safe and that that priests would not sexually abuse Plaintiff.

30. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Father Marion Tolczyk, to ensure that Father Marion Tolczyk did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

31. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School knew or should have known of Father Marion Tolczyk's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of the injuries' occurrence.

32. The sexual abuse of children by adults, including clerics, is a foreseeable result of negligence.

33. Father Marion Tolczyk sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to St. Francis High School.

34. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School negligently hired, retained, directed, and supervised Father Marion Tolczyk as they knew or should have known that Father Marion Tolczyk posed a threat of sexual abuse to children.

35. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were negligent in failing properly to supervise Father Marion Tolczyk.

36. At all times material hereto, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

37. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

38. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and punitive damages, together with interest and costs.

## **SECOND CAUSE OF ACTION**

### **Negligence/Gross Negligence**

#### **(As to All Defendants)**

39. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

40. At all times material hereto, with regard to the allegations contained herein, Father Marion Tolczyk was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School.

41. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School owed Plaintiff, at all relevant times, a minor, a duty to protect him from Father Marion Tolczyk's sexual deviancy and the consequent damages, both prior to and/or subsequent to Father Marion Tolczyk's misconduct.

42. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School knew, or were negligent in not knowing, that Father Marion Tolczyk posed a threat of sexual abuse to children.

43. The acts of Father Marion Tolczyk described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with the Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School .

44. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.



45. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Father Marion Tolczyk; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

46. At all times material hereto, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

47. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

48. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

### **THIRD CAUSE OF ACTION**

#### **Breach of Non-Delegable Duty**

**(As to All Defendants)**

49. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

50. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, religious, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

51. Plaintiff was a vulnerable child when placed within the care of the Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School.

52. As a consequence, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were in the best position to prevent Father Marion Tolczyk's sexual abuse of Plaintiff, to learn of said sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father Marion Tolczyk's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

53. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School, Defendants breached their non-delegable duty to Plaintiff.

54. At all times material hereto, Father Marion Tolczyk was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School.

55. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

56. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

#### **FOURTH CAUSE OF ACTION**

##### **Breach of Fiduciary Duty**

##### **(As to All Defendants)**

57. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

58. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Father Marion Tolczyk, a priest of the Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School. During the times that Plaintiff was entrusted to Father Marion Tolczyk, Father Marion Tolczyk was under the supervision and control of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School.

59. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School. This entrustment of the Plaintiff to the care and supervision of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School, while the Plaintiff was a minor child,

required Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect him due to him infancy and vulnerability.

60. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were entrusted with the well-being, care, and safety of Plaintiff.

61. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School assumed a duty to act in the best interests of Plaintiff.

62. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School breached their fiduciary duties to Plaintiff.

63. At all times material hereto, Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

64. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

65. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

### **FIFTH CAUSE OF ACTION**

#### **Negligent Infliction of Emotional Distress**

**(As to All Defendants)**

66. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

67. As described above, the actions of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

68. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School's actions and/or inactions endangered Plaintiff's safety and caused him to fear for his own safety.

69. As a direct and proximate result of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School actions and/or inactions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

70. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

**SIXTH CAUSE OF ACTION*****Breach of Duty in Loco Parentis*****(As to All Defendants)**

71. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 27 as if fully set forth herein.

72. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Father Marion Tolczyk, a priest of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School's. During the times that Plaintiff was entrusted to Father Marion Tolczyk, Father Marion Tolczyk was under the supervision and control of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

73. Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School breached their duty to act *in loco parentis*.

74. At all times material hereto Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

75. As a direct result of Defendants Diocese of Buffalo, OFM Conv. – OLA, and St. Francis High School's conduct, Plaintiff has suffered the injuries and damages described herein.

76. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 14, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone  
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**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK )

) SS:

COUNTY OF EERIE )

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am the attorney of record or of counsel with the attorney(s) of record for the plaintiff.

I have read the annexed SUMMONS AND VERIFIED COMPLAINT and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief. As to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge is based upon the following:

Interviews and/or discussions held with the plaintiff(s) and papers and/or documents in the file.

The reason I make this affirmation instead of the plaintiff is because said plaintiff resides outside the county from where your deponent maintains his office for the practice of law.

Dated: New York, NY  
August 14, 2019



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